

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**
11

12 **THE PEOPLE OF THE STATE OF**
13 **CALIFORNIA,**

14 Plaintiff,

15 v.

16 **DAVANTHONI LEWRENCE**
17 **CONNERS,**

18 Defendant.

Case No. LA CV 17-01995-VBF (AFM)

**ORDER REMANDING CASE TO
STATE COURT**

19 On March 13, 2017, defendant Connors purported to remove his criminal
20 action, Case No. BA447941, from Los Angeles County Superior Court to this Court
21 by filing a “Notice of Removal” in which he cites 28 U.S.C. §§ 1443 and 1455. *See*
22 CM/ECF Document (“Doc” 1). Defendant also filed a request to proceed in forma
23 pauperis (Doc 3), which will be denied by separate order in light of the remand.

24 Defendant contends that he is removing a state-court criminal proceeding to
25 this District Court. First, defendant indicates that he is a descendent of two Indian
26 Tribes, which he contends have “original jurisdiction pursuant to” 25 U.S.C.
27 §§ 1911 and 1920. (Doc 1 at 1-2.) The cited statutes, however, pertain solely to
28 jurisdiction over child custody matters and are not relevant herein. Defendant cites

1 no other basis for removal arising from his Native American status.

2 In addition, to support the removal of his state-court criminal proceeding,
3 defendant cites 28 U.S.C. §§ 1443, 1455(a), 1455(b)(2) (Doc 1 at 1, 2, 5), and he
4 argues that he has been deprived of “fundamental rights” during the investigation,
5 arraignment, and preliminary hearing of his criminal matter in state court (*id.* at 2-
6 4). The documents attached to the Request reflect that a Felony Complaint for an
7 Arrest Warrant was executed on June 28, 2016, charging defendant with various
8 violations of the California Penal Code. (*Id.* at 6-10).

9
10 **“Federal courts are courts of limited jurisdiction. . . . It is to be**
11 **presumed that a cause lies outside this limited jurisdiction, and the burden of**
12 **establishing the contrary rests upon the party asserting jurisdiction.”**
13 *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) (internal
14 citations omitted). Further, the “‘strong presumption’ against removal jurisdiction
15 means that the [removing party] always has the burden of establishing that removal
16 is proper.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam).
17 *See, e.g., Rancho Horizon, LLC v. Sabanayagam*, 2013 WL 12123987, *1 (C.D.
18 Cal. Feb. 28, 2013) (George King, C.J.) (“Defendant’s notice of removal of this
19 state[-]court unlawful detainer action is insufficient to overcome the ‘strong
20 presumption against removal jurisdiction’ and to meet the removing party’s burden
21 of ‘establishing that removal is proper.’”) (quoting *Gaus*, 980 F.2d at 566, and
22 *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009)). “Because the
23 court applies a presumption against removal jurisdiction, it may deny such
24 jurisdiction ‘if not affirmatively apparent from the record.’” *Ley’s v. Lowe’s Home*
25 *Ctrs, Inc.*, 601 F. Supp.2d 908, 916 n.10 (W.D. Mich. Jan. 9, 2009) (cites omitted).

26 In addition, **“all disputed questions of fact and all ambiguities in the**
27 **controlling state law must be resolved in favor of remand to state court.”** *Chen*
28 *v. Saint Jude Medical, LLC*, 2017 WL 1289822, *3 (C.D. Cal. Apr. 5, 2017)

1 (Cormac Carney, J.) (citing *Hunter*, 582 F.3d at 1042).

2 Moreover, the Court has a “duty to establish subject matter jurisdiction over
3 the removed action *sua sponte*, whether the parties [have] raised the issue or not.”
4 *United Investors Life Ins. Co. v. Waddell & Reed, Inc.*, 360 F.3d 960, 967 (9th Cir.
5 2004). “If at any time before final judgment it appears that the district court lacks
6 subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447
7 subsection c.

8
9 **When a state-court prosecution is removed**, the Court must “examine the
10 notice [of removal] promptly” upon its filing, and “[i]f it clearly appears on the face
11 of the notice and any exhibits annexed thereto that removal should not be permitted,
12 the court shall make an order for summary remand.” 28 U.S.C. § 1455(b)(4).

13 Further, § 1455 is merely a procedural mechanism for removal of a criminal
14 case; it does not provide any substantive grounds to support removal. Rather, the
15 jurisdictional bases for removal of criminal actions are set forth in 28 U.S.C. §§
16 1442, 1442a and 1443. Sections 1442 and 1442a are inapplicable here because
17 defendant does not allege that he is a federal officer or member of the armed forces.

18 Pursuant to § 1443, any defendant may remove a criminal prosecution to
19 federal court if he seeks to – and, because of state law, cannot – assert a defense to
20 the prosecution based on federal laws protecting equal civil rights. *See* 28 U.S.C.
21 § 1443; *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998-99 (9th Cir. 2006). Although
22 defendant alleges that his arrest, arraignment, and detention in connection with the
23 prosecution violated his constitutional rights, a prosecution that “is assertedly a
24 sham, corrupt, or without evidentiary basis does not, standing alone, satisfy the
25 requirements of § 1443(1).” *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975);
26 *California v. Sandoval*, 434 F.2d 635, 636 (9th Cir. 1970) (“[b]ad experiences with
27 the particular court in question will not suffice” for 1443 removal).

28 The Supreme Court has held that removal under § 1443(1) will be permitted

1 only if the defendant can satisfy a two-part test. *See Johnson*, 421 U.S. at 219.
2 First, a defendant “must assert, as a defense to the prosecution, rights that are given
3 to [him] by explicit statutory enactment protecting equal racial civil rights.”
4 Second, he “must assert that the state courts will not enforce that right,” supporting
5 the assertion by reference to a specific state statute or constitutional provision.
6 *Patel*, 446 F.3d at 998-99 (citing *Georgia v. Rachel*, 384 U.S. 780, 788-92 (1966)).
7

8 **Here, defendant cites no state law, whether constitutional or statutory or**
9 **otherwise, that can be expected to prevent him from enforcing his federal**
10 **constitutional or statutory civil rights. Accordingly, defendant has failed to**
11 **show that the state-court criminal proceeding is removable under § 1443. *See***
12 ***City of Greenwood, Miss. v. Peacock*, 384 U.S. 808, 832 (1966) (rejecting**
13 **defendants’ argument that they were entitled to remove their criminal misdemeanor**
14 **proceedings to federal court based on their race and their belief they would be**
15 **unable to obtain a fair trial in the state court, noting that if this interpretation were**
16 **to prevail, “every criminal case in every court of every State – on any charge from**
17 **a five dollar misdemeanor to first-degree murder – would be removable to a federal**
18 **court upon a petition alleging (1) that the defendant was being prosecuted because**
19 **of his race and that he was completely innocent of the charge brought against him,**
20 **or (2) that he would be unable to obtain a fair trial in the state court”).**
21

22 For these reasons, the Court finds that defendant has failed to satisfy his
23 burden of establishing this Court’s subject-matter jurisdiction over his state-court
24 criminal proceeding. Because defendant has failed to establish a basis for removal,
25 the Court lacks jurisdiction, and the case will be remanded to state court.
26

27 **ORDER**

28 **Pursuant to 28 U.S.C. § 1455(b)(4), this matter is summarily remanded**

1 **to the Los Angeles County Superior Court for all further proceedings.**

2
3 Dated: Wednesday, April 12, 2017

Valerie Baker Fairbank

4
5
6 VALERIE BAKER FAIRBANK
Senior United States District Judge